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SIPDIS

STATE FOR WHA/BSC AND EPSC; EB/IPC
STATE PASS TO USTR FOR SCRININ, LYANG AND BPECK
STATE PASS USPTO FOR LLOURIE, CBERDUT, MRASENBERGER
USDOC FOR 4332/ITA/MAC/OLAC/WBASTION/JANDERSON/DMCDOUGA L
AND FOR JBOGER
NSC FOR MIKE DEMPSEY

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TAGS: [ETRD](#) [KIPR](#) [BR](#) [IPR](#)

SUBJECT: GSP: FIRST US-BRAZIL IPR WORKING GROUP MEETING

Classified By: Economic Officer Janice Fair for reasons 1.4, (b) and (d)
)

1. (C) Summary. As a result of the 90-day extension announced on June 30, 2004 for review of Brazil's trade benefits under the Generalized System of Preferences (GSP), a bilateral IPR Working Group held its inaugural session on August 5 in Rio de Janeiro to discuss IPR enforcement issues.

The WG was formed as part of the existing U.S.-Brazil Bilateral Consultative Mechanism (BCM) with the aim of identifying concrete steps the GoB is undertaking to improve enforcement of copyright laws and combat piracy. Not unexpectedly, the GoB offered no concrete commitments on new actions during this initial meeting. However, despite some push-back, the atmospherics for the meeting were generally positive and the tone of the discussion was constructive. The next WG session will take place in Washington DC the week of September 6 and will focus on producing a report, which will be presented later in the month to DUSTR Peter Allgeier and to U/S Clodoaldo Hugueneu, as joint chairs of the BCM process. The U.S. GSP Committee will review the WG's report as it considers further action regarding the International Intellectual Property Alliance (IIPA) petition to remove Brazil's GSP benefits. End Summary.

2. (U) Within the United States-Brazil Bilateral Consultative Mechanism process, U.S. and Brazilian officials launched a bilateral Working Group on IPR enforcement during a five-hour session in Rio de Janeiro on August 5, 2004. The Brazilian delegation was led by Foreign Ministry rep Antonino Marques Porto e Santos, Chief of the Department for Scientific and Technological Affairs, who reports directly to MRE's Undersecretary for Economic and Technological Affairs, Ambassador Hugueneu. Porto was accompanied by Otavio Brandelli and Henrique Choer Moraes - Acting Chief and Advisor in MRE's Intellectual Property Division, respectively; Ambassador Oswaldo Portella - International Advisor, Valquiria Souza Teixeira de Andrade - Director General of the Federal Police, and Robson Robin da Silva -Advisor to the National Secretariat for Public Security from the Ministry of Justice; and Ernani Checcucci - Acting Director General of Customs in the Ministry of Finance.

3. (U) Sue Cronin, USTR Senior Director for Brazil and the Southern Cone led the U.S. delegation, which included Linda Lourie, Attorney-Advisor, USPTO Office of International Relations; David Edwards, State Brazil desk officer; Erin McConaha, Consulate Rio Econoff; and Janice Fair, Embassy Brasilia Econoff. USG participants for the afternoon session via teleconference were Brian Peck, Senior Director of Intellectual Property, USTR; Leslie Yang, Director for MERCOSUR, USTR; Caridad Berdut, Attorney-Advisor, USPTO Office of Enforcement; Mary Rasenberger, Policy Planning Advisor, U.S. Copyright Office; Jennifer Boger, International Trade Specialist, Commerce Department; and Meg Ward, Brazil desk officer, Commerce Department.

4. (SBU) The WG on IPR enforcement was formed as a result of discussions between DUSTR Peter Allgeier and Brazilian Ambassador to the U.S., Roberto Abdenur, following USTR's announcement on June 30, 2004 that the USG's review of Brazil's continuing benefits under the Generalized System of Preferences (GSP) trade program had been extended by 90 days (until September 30). The review was prompted by a petition submitted in 2001 in which the IIPA requested that GSP benefits for Brazilian products be removed on grounds the Brazilian government does not provide adequate copyright protection. While providing a bilateral forum for discussion of IPR enforcement issues in general, the WG has as a specific objective the development of a report on the GoB's recent actions and work plan for improving the enforcement of copyright protection and combating piracy. This information will feed into GSP Committee deliberations as it decides what action to take regarding the IIPA petition.

5. (C) Not surprisingly, no GoB commitments emerged from this initial meeting. However, despite a pro-forma reiteration of the Brazilian view that it is inappropriate to address IPR enforcement under the GSP program, the tone of the meeting

was generally constructive, with Brazilian interlocutors professing a sincere interest in resolving the GSP/IPR issue.

16. (C) In his opening remarks, Minister Porto cautioned against misrepresentations that imply the GoB has done little in ("lacks") IPR enforcement. He emphasized that the WG should work constructively to avoid negative repercussions in the otherwise broad and rich bilateral relationship. To deflect the focus from being solely on GoB actions, Porto was also keen throughout the meeting to frame the discussion as a bilateral exchange and to emphasize that effective IPR enforcement cannot be attained by Brazil alone, but requires international cooperation.

17. (C) To ensure the Brazilian interlocutors understood the seriousness of the situation, Cronin drew attention to the real risk posed by the GSP review by noting the past withdrawal of GSP benefits from Argentina and Honduras on IPR grounds. Cronin stressed the USG preference to avoid such an outcome through a productive WG process. Cronin also took pains to make clear that although the WG is a bilateral forum, the WG is charged with producing a report that identifies GoB, not USG, actions to improve copyright enforcement; the issue is piracy of U.S. products in the Brazilian market, not piracy of Brazilian products in the U.S. market.

18. (C) Regarding possible GoB actions, Porto stressed that the WG process itself is important and that Brazil won't accept guidelines imposed from abroad. Porto and his team said the Brazilian executive branch is analyzing the recommendations contained in the June 23 report of the Chamber of Deputies' Parliamentary Investigative Commission (CPI) on Piracy and Tax Evasion, but it was not yet possible to identify those measures that will be implemented. They stressed the complexity of certain recommendations, particularly those involving different branches of the government, and cautioned that the CPI report is not a cake recipe in which once the recommendations are implemented piracy is eliminated. Cronin suggested the CPI recommendations be viewed more as a menu offering good suggestions on meaningful actions the GoB can undertake to combat piracy.

19. (C) Minister Porto and his delegation gave extensive reports on current GoB enforcement efforts including those of the Federal Police, Customs, and of the Secretariat of Public Security. Some of the more interesting points included:

- Admission that the Inter-ministerial Committee on Piracy had not performed adequately and an indication the GoB is looking at its reformulation, including possible inclusion of private-sector representatives and a more direct role with law enforcement activities.
- Existence of Mercosul Agreement #5 in 2003 to enhance regional security by strengthening intelligence exchange on piracy activities and GoB plans to press for increased joint action in the Southern Cone during Brazil's tenure as Mercosul president pro tempore. Specifically, copyright violation will be a central topic of Interior Ministers (Mercosul plus Associate members) during a meeting this semester.
- Existence of a Unified Public Security System (Ministry of Justice) for integrating and standardizing crime information as a means of improving public security (covers all types of crime).
- With regard to a CPI recommendation for increasing copyright infringement penalties, Porto noted that changes to Brazil's penal code in 2003 already increased the minimum sentence from one to two years (Note: the increase in penalties does not apply to software piracy).
- Seemingly high level of coordination with other government agencies by Brazil's Customs to combat smuggling at ports, airports, and along the frontier. Customs uses an integrated system of a trade database and intelligence information to determine inspections based on risk factor. To deter transshipment of pirated products or their base materials, Customs inspects all shipments of "sensitive" products - included virgin CDs since 2000; list was expanded this year to now include all shipments of CDs. Customs is also considering banning the transshipment of CDs and blank CD-ROMs (presumably to Paraguay).

110. (SBU) U.S. officials on conference call from Washington provided an overview of U.S. procedures to combat piracy, in particular, U.S. Customs' ability as a competent authority to determine infringement and dispose of merchandise without judicial action.

111. (C) In speaking with Porto after the formal close of the meeting, Cronin emphasized the need for the WG to show real results, and explained that the WG report will be considered by the GSP Committee in making its final decision on the 90-day GSP review. Cronin also noted that the role of the judicial system had not been discussed and encouraged the GoB to consider possible action in this area to further deter

piracy.

¶12. (C) The next WG meeting will take place in Washington DC. the week of September 6, specific date to be determined, and will focus on producing a report. Working Group officials will present their report later in September to DUSTR Peter Allgeier and to the Foreign Ministry's Under Secretary for Economic and Technological Affairs, Clodoaldo Hugueney, joint chairs of the BCM, at a venue to be determined.

Comment

¶13. (C) Considering the GoB's normal sensitivity regarding IPR issues, the frank and serious exchange of this meeting is noteworthy. While Porto displayed some prickliness out of concern that the shorthand reference to "Brazil's lack of enforcement" evokes the misperception that Brazil in no way provides IPR protection, he refrained from using "lack of resources" and legalistic arguments (recent WTO case on EU's GSP program) to avoid entirely a discussion of the GSP/IPR enforcement problem. This in part may reflect the less antagonistic attitude of Ambassador Hugueney, with whom USTR works closely on WTO issues, compared to those of his other MRE counterparts. The timing may also be propitious, as the fanfare surrounding the CPI report already creates pressure within Brazil to improve IPR protection, so that subsequent GoB enactment of new measures need not be linked to USG pressure. These next weeks may clarify GoB intentions as the CPI formally wraps up on August 11. The GoB will likely give serious and careful consideration to CPI recommendations in an effort to calibrate its response to the USG, searching for sufficient action to avoid losing GSP benefits. It is impossible to know at this juncture if the GoB is prepared to do what is necessary. The devil will be in the details when the WG next meets and the discussion turns to the specifics of the report.

¶14. (U) This cable was cleared by USTR and coordinated with Consulate Rio. Danilovich